

REMARKS

Applicants respectfully request reconsideration of the instant application in the view of the foregoing amendments and/or the following remarks. Claims 98-108, 110, 111 and 138-151 are currently pending in the instant application. Claims 98, 138 and 148-151 are independent in form. Applicants have amended claims 98, 105, 138 and 148-151 by way of this Response. Applicants submit that support for the amendments may be found throughout the originally filed specification, drawings, and claims, and that no new matter has been added by way of this Response.

Rejection under 35 U.S.C. § 103

The Examiner has rejected claims 98-108, 110, 111 138-151 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Spallone et al., U.S. Patent No. 4,959,686 (hereinafter, "Spallone") in view of Bezos, U.S. Patent No. 5,715,399 (hereinafter, "Bezos"). Applicants respectfully traverse the Examiner's rejection and submit that a prima facie case of obviousness has not been established and that the pending claims are patentably distinct from the cited references, taken alone or in combination, for at least the following reasons.

MPEP § 706.02(j) prescribes that a rejection under 35 U.S.C. § 103 should set forth:

- (i) the relevant teachings of the prior art relied upon,
- (ii) the differences in the claim over the applied references,
- (iii) the proposed modification of the applied references to arrive at the claimed subject matter, and
- (iv) an explanation as to why the claimed invention would have been obvious to one of ordinary skill in the art at the time the invention was made.

Applicants submit that the rejections in the pending Office Action do not establish each of these requirements.

Applicants submit that the rejections in the February 22, 2008 Office Action fail to establish the relevant teachings of the prior art relied upon and differences in the claim over the applied references by not addressing every claim limitation, by mischaracterizing claim elements, and by over-generalizing references. The MPEP prescribes that, "when evaluating the scope of a claim, *every limitation in the claim must be considered*," [§ 2106 II(C), emphasis added] and, "*All words* in a claim must be considered in judging the patentability of that claim against the prior art." [§ 2143.03, emphasis added].

Applicants submit that the pending rejection has cited no reference nor taken Official Notice with respect to several elements of the pending claims. By way of example only, Applicants note that the pending rejection has not addressed the claim elements, "a web page accessible by customers," or "a customer utilizing said web page," as recited in independent claim 98. Nor has the pending rejection addressed the claim element, "... within a predetermined period of time after transmitting a rejection of said first conditional purchase offer ...," as recited in independent claim 138. In still another example, the pending rejection has not addressed the claim element, "said web page for purchasing travel-related products," recited in independent claim 149. Accordingly, Applicants respectfully request reconsideration and withdrawal of the pending rejection. Should the Examiner disagree, Applicants respectfully request that the Examiner fully consider "[a]ll words in a claim" in judging the patentability of each and every claim against the prior art, as required by MPEP § 2143.03.

Applicants further submit that the pending rejection has not addressed the claim element "take an action to deter the customer from submitting multiple conditional purchase offers for said goods or services, wherein said action includes limiting additional conditional purchase

offers containing a progressively increasing price," as recited in independent claim 98. In the February 22, 2008 Office Action, the Examiner alleges,

The notation within the inventory database [of Spallone] (Fig. 5) that the item is out of stock prevents the customer from any orders on that particular item. This in turn limits any additional purchase offers being indicated by the customer no matter what the price is. (February 22, 2008 Office Action, p. 2, ¶ 3)

Applicants traverse this argument and submit that the pending rejection has misstated the claim element and not considered "[a]ll words in a claim" as prescribed by MPEP § 2143.03. The inability of a grocer to provide a product that is out of stock to a customer, as described in Spallone, is not analogous to "take an action to deter the customer from submitting multiple conditional purchase offers for said goods or services, wherein said action includes limiting additional conditional purchase offers containing a progressively increasing price," as recited in claim 98. Spallone's system does not, for example, prevent a customer from submitting "multiple conditional purchase offers" for "goods or services" that are available and/or in stock. Thus, Spallone's system taken alone or in combination with Bezos, assuming such a combination were even possible, does not result in Applicants' claim. Accordingly, Applicants respectfully request reconsideration and withdrawal of the pending rejection. Should the Examiner disagree, Applicants respectfully request that the Examiner show how the references discuss "multiple conditional purchase offers" and how they discuss taking "an action to deter the customer from submitting" them, "wherein said action includes limiting additional conditional purchase offers containing a progressively increasing price," without the ad hoc presumption that requested items, goods, or services are out of stock.

Applicants further submit that the pending rejection has not established the relevant teachings of the prior art and the differences of the claim over the prior art with respect to the

claim limitation, "receive a conditional purchase offer including an offer price from a customer," as recited in independent claim 98. In the February 22, 2008 Office Action, the Examiner alleges, "The processors [of Spallone] (220, 230) receive conditional purchase offers from customers (FIGS 3B-3F -- customer makes offers for food purchase and both knows and controls the price of offer)." (February 22, 2008 Office Action, p. 2, ¶ 3). Applicants traverse this argument and submit that the pending rejection has mischaracterized the claim element and over-generalized the cited reference. Claim 98 does not recite that a customer "knows and controls the price," but rather a "processor operative with said program to . . . receive . . . an offer price from a customer . . ." The November 24, 2006 Office Action advanced a similar argument, that "the customer dictates price by controlling the quantity and product type of an order." (November 24, 2006 Office Action, p. 7, ¶ 1). While Spallone may show that a customer selects a type and quantity of the particular grocery item being ordered for subsequent pick up at the deli counter (e.g., Spallone, Figs. 3B-F), the price for the goods are set, stored, and maintained by the grocer. Spallone recites, in the very same section of the reference cited by the pending rejection, that, "[t]he unit price of the item is then obtained from the data base (block 1113), the price for the item is computed by multiplying the quantity by the unit price, and both the unit price and the item price are displayed to the customer (see FIG. 3E)." (Spallone, col. 7, lines 31-35, emphasis added). Applicants submit that a quantity of a good or service is not equivalent or analogous to either a unit price or a total price, which can both be set independently of the quantity of goods being purchased. Spallone is clear that neither the unit price, which is retrieved from a system database, nor the total price, which is computed from the unit price and the quantity, is received from a customer. Accordingly, Applicants respectfully request reconsideration and withdrawal of the Examiner's rejection.

Applicants further submit that the pending rejection has mischaracterized the claim element, "if said conditional purchase offer is acceptable, transmit a purchase indicator to a third party for payment pre-authorization," as recited in independent claim 149. In the February 22, 2008 Office Action, the Examiner alleges,

This claim [149] also specifies an optional condition of a purchase offer being accepted and transmitting an indicator to a third party for pre-authorization. Since this feature is optionally recited, it carries no patentable weight. Nonetheless, even if it were given patentable weight, it merely defines an inherent feature of credit card processing, which involves the pre-authorized use of credit by a third party credit processor or bank. (February 22, 2008 Office Action, p. 5, ¶ 2)

Applicants traverse this argument and respectfully request clarification as to why the Examiner believes that the above referenced claim limitation is "optionally recited". Applicants submit that the inclusion of conditional language in a claim element does not render the claim element "optional". Furthermore, Applicants submit that the Examiner has rejected the claim element without providing a citation to a single reference or taking Official Notice. Accordingly, Applicants respectfully request reconsideration and withdrawal of the Examiner's rejection. Should the Examiner disagree, Applicants respectfully request that the Examiner indicate evidence in the prior art to support his rejection.

Furthermore, Applicants submit that the rejection in the February 22, 2008 Office Action has not established why the claimed invention would have been obvious to one of ordinary skill in the art at the time the invention was made by not discussing the level of ordinary skill in the art at the time of the invention. MPEP § 2141 (II)(C) states, "Any obviousness rejection should include, either explicitly or implicitly in view of the prior art applied, an indication of the level of ordinary skill." The pending rejection refers to, "one of ordinary skill in the art," but has provided no indication, explicit or otherwise, of what art is being referred to or the level of

ordinary skill that the Examiner believes is associated therewith. Nor do the applied references provide any implicit indication of the level of ordinary skill, as those references are disparate in subject matter (e.g., Spallone discusses an in-store "shopping order entry system" for supermarkets [see, Spallone, Abstract], while Bezos discusses a system for secure payment over a non-secure network [see, Bezos, Abstract]) as well as in filing date. MPEP § 2141.03 (III) states, "The importance of resolving the level of ordinary skill in the art lies in the necessity of maintaining objectivity in the obviousness inquiry." Applicants submit that impermissible hindsight has been applied in asserting obviousness of the various claim elements without providing an indication of the level of ordinary skill. As such, Applicants respectfully request that, if the Examiner maintains this rejection, the Examiner discuss the level of ordinary skill in the art at the time of the invention and clarify how the claimed subject matter would have been obvious to one possessing that level of skill.

Though Applicants contend that the Examiner has not established a *prima facie* case of obviousness based at least on the reasons given above, Applicants have amended claims 98, 138 and 148-151 to provide clarification and to better track current business practices and implementations. Applicants maintain that the claims in their original form and in their prior pending form were in condition for allowance and explicitly reserve the right to return to either or both of those forms and argue patentability at a later time.

Amended claim 98 recites, *inter alia*, "receive a conditional purchase offer including an offer unit price from a customer utilizing said web page for purchasing goods or services . . ." Applicants submit that this claim element is not discussed or rendered obvious by Spallone, which discusses an in-store order placement system, or by Bezos, which describes a system for secure payments, as described above. In particular, as the unit price for groceries in Spallone is

set by the seller and stored in a supermarket data base (see, e.g., Spallone, Fig. 5), at no time does Spallone's system "receive . . . an offer unit price from a customer," as recited in claim 98. As neither of the references, taken alone or in combination, discuss at least this claim element, Applicants respectfully request reconsideration and withdrawal of the Examiner's rejection.

Although of different scope than claim 98, Applicant submits that claim 138 is patentable over Spallone in view of Bezos for at least similar reasons as discussed above identifying deficiencies in both Spallone and Bezos with regard to independent claim 98. For example, amended claim 138 recites, *inter alia*:

A system, comprising:

...
receive a first conditional purchase offer including an offer unit price from a customer utilizing said web page for purchasing goods or services;

...
take an action to deter the customer from submitting a second conditional purchase offer with an increased offer unit price for said goods or services within a predetermined period of time after transmitting a rejection of said first conditional purchase offer, wherein said action includes limiting additional conditional purchase offers containing a progressively increasing unit price.

Applicant respectfully submits that at least these claim elements from independent claim 138 are not discussed or rendered obvious by Rosenhaft, which discusses a single confirmation announcement sent to a user originating a user sequence, nor by Orwick, which discusses sending of a uniform message with no selection process, taken alone or in combination.

Although of different scope than claim 98, Applicant submits that claim 148 is patentable over Spallone in view of Bezos for at least similar reasons as discussed above identifying deficiencies in both Spallone and Bezos with regard to independent claim 98. For example, amended claim 148 recites, *inter alia*:

A system, comprising:

...

receive a conditional purchase offer including a customer defined offer unit price from a customer utilizing said web page for purchasing goods or services;

...

take an action to deter the customer from submitting multiple conditional purchase offers for said goods or services, wherein said action includes limiting additional conditional purchase offers containing a progressively increasing unit price based on an unacceptable conditional purchase offer.

Applicant respectfully submits that at least these claim elements from independent claim 148 are not discussed or rendered obvious by Rosenhaft, which discusses a single confirmation announcement sent to a user originating a user sequence, nor by Orwick, which discusses sending of a uniform message with no selection process, taken alone or in combination.

Although of different scope than claim 98, Applicant submits that claim 149 is patentable over Spallone in view of Bezos for at least similar reasons as discussed above identifying deficiencies in both Spallone and Bezos with regard to independent claim 98. For example, amended claim 149 recites, *inter alia*:

A system, comprising:

...
receive a conditional purchase offer including a customer-defined offer unit price, from a customer utilizing said web page for purchasing said travel-related products;

...
take an action to deter the customer from submitting multiple conditional purchase offers for said goods or services, wherein said action includes limiting additional conditional purchase offers containing a progressively increasing unit price.

Applicant respectfully submits that at least these claim elements from independent claim 149 are not discussed or rendered obvious by Rosenhaft, which discusses a single confirmation announcement sent to a user originating a user sequence, nor by Orwick, which discusses sending of a uniform message with no selection process, taken alone or in combination.

Although of different scope than claim 98, Applicant submits that claim 150 is patentable over Spallone in view of Bezos for at least similar reasons as discussed above identifying deficiencies in both Spallone and Bezos with regard to independent claim 98. For example, amended claim 150 recites, *inter alia*:

A system, comprising:

...
receive a conditional purchase offer including an offer unit price from a customer utilizing said web page for purchasing goods or services;

...
take an action to deter the customer from submitting multiple incremental conditional purchase offers for said goods or services to prevent the customer from identifying a seller's selling price for accepting the conditional purchase offer.

Applicant respectfully submits that at least these claim elements from independent claim 150 are not discussed or rendered obvious by Rosenhaft, which discusses a single confirmation announcement sent to a user originating a user sequence, nor by Orwick, which discusses sending of a uniform message with no selection process, taken alone or in combination.

Although of different scope than claim 98, Applicant submits that claim 151 is patentable over Spallone in view of Bezos for at least similar reasons as discussed above identifying deficiencies in both Spallone and Bezos with regard to independent claim 98. For example, amended claim 151 recites, *inter alia*:

A system, comprising:

...

receive a conditional purchase offer including at least one customer-defined purchase condition and a customer-defined offer unit price from a customer utilizing said web page for purchasing goods or services;

...

(ii) take an action to deter the same customer from submitting multiple conditional purchase offers for said goods or services , wherein said action includes limiting additional conditional purchase offers containing a progressively increasing unit price.

Applicant respectfully submits that at least these claim elements from independent claim 151 are not discussed or rendered obvious by Rosenhaft, which discusses a single confirmation announcement sent to a user originating a user sequence, nor by Orwick, which discusses sending of a uniform message with no selection process, taken alone or in combination.

Furthermore, Applicants submit claims 99-108, 110, 111 and 139-147, which are directly or indirectly dependent from independent claims 98 and 138, are also not taught, anticipated, or rendered obvious by the cited references, taken alone or in combination, for at least the reasons discussed above.

Accordingly, Applicant requests withdrawal of this ground of rejections.

CONCLUSION

Consequently, the reference(s) cited by the office action do not result in the claimed invention, there was/is no motivation for such a combination of references (i.e., cited references do not teach, read on, suggest, or result in the claimed invention(s)), and the claimed inventions are not admitted to be prior art. Thus, the Applicant respectfully submits that the supporting remarks and claimed inventions, claims 98-108, 110, 111 and 138-151, all: overcome all rejections and/or objections as noted in the office action, are patentable over and discriminated from the cited reference(s), and are in a condition for allowance. Furthermore, Applicant believes that the above remarks, which distinguish the claims over the cited reference(s), pertained only to noted claim element portions. These remarks are believed to be sufficient to overcome the prior art. While many other claim elements were not discussed, Applicant asserts that all such remaining and not discussed claim elements, all, also are distinguished over the prior art and reserves the opportunity to more particularly remark and distinguish such remaining claim elements at a later time should it become necessary. Further, any remarks that were made in response to an Examiner objection and/or rejection as to any one claim element, and which may have been re-asserted as applying to another Examiner objection and/or rejection as to any other

claim element(s), any such re-assertion of remarks is not meant to imply that there is commonality about the structure, functionality, means, operation, and/or scope of any of the claim elements, and no such commonality is admitted as a consequence of any such re-assertion of remarks. As such, Applicant does not concede that any claim elements have been anticipated and/or rendered obvious by any of the cited reference(s). Accordingly, Applicant respectfully requests allowance, and the reconsideration and withdrawal of the rejection(s) and/or objection(s).

If a telephone conference would facilitate prosecution of this application in any way, the Examiner is invited to contact the undersigned at the number provided.
